

A Guide to the Subsidence Claims Process

It is worth noting that many claims turn out to be due to other causes and the repudiation rate (number of claims refused) varies from 40% to 60%.

In recent years there has been a move towards immediate repair. However, this may not always be possible; resulting in the need for a detailed investigation and monitoring period.

Most often, the claims process is a managed project; involving the use of your insurer's own surveyors and engineers (or outsourced via a delegated authority).

Investigation

If the damage is minor, or the cause is obvious, it is not always necessary to undertake intrusive site investigations.

On more complex cases the nature, depth and bearing of the foundations may need to be established.

This is normally achieved by the excavation of trial holes in those positions suspected to have subsided.

The holes must go to a minimum of the base of the foundation. The trial pit should be extended beyond the depth of the foundation using an auger and samples of the soil are taken at various depths for soil analysis.

Monitoring

With subsidence damage, the critical issue is whether the movement is on-going and the building is no longer stable. Monitoring is carried out for three main reasons:

- To confirm the cause of the damage
- To establish the extent if ongoing movement
- To determine the effectiveness of remedial works

Repairs

The Building Research Establishment (BRE) has published a classification system for subsidence and the type of repair required.

Damage Category	Crack width (mm)	Description of Damage	Recommended Repair
0	Up to 0.1mm	Hairline: Negligible structural implications and expected to occur on almost all buildings at any location. Not generally related to subsidence.	Can be filled or covered by wall covering and redecorated

Damage Category	Crack width (mm)	Description of Damage	Recommended Repair
1	Up to 1mm	Fine: May have some structural significance. Often these are more visible inside the building than outside. Generally located at points of structural weakness (doors/windows). Indicates slight foundation movement.	Can be filled or covered by wall covering and redecorated
2	Up to 5mm	Moderate: Most likely to have some structural significance and will almost always occur at points of weakness or hinge points. Generally, cracks will be visible internally and externally and will indicate foundation movement enough to distort door and window frames and make doors and windows stick.	Internal cracks are likely to be raked out and repaired to a recognised specification. May need to be chopped back and repaired with expanded metal/plaster, then redecorated – if not cracking is likely to return. External walls require raking out and repointing – any cracked bricks replaced.
3	5 to 15mm	Serious: There will be some severe compromise of the structural integrity and weather tightness will be impaired.	Internal cracks repaired as per Moderate , with reconstruction if required. Rebonding is required. External cracks will also require reconstruction perhaps of panels of brickwork. Specialist resin bonding techniques may be required
4	15 to 25mm	Severe: Structural integrity severely compromised – floors, sloping walls, leaning or bulging, lintels suspect. Pipe fracture inevitable – windows broken.	Major reconstruction works to internal and external wall skins. Realignment of windows and doors
5	Greater than 25	Very Severe: Potential Danger from failed or fractured structural elements and for instability. Safety issues must be considered.	Major reconstruction works, plus possible structural lifting or sectional demolition and rebuild. Window and door replacement. CDM will probably apply.

The above, coupled with the findings of the investigation, determine the repair approach - leaking drains or water mains are fixed, trees removed or managed – and repairs undertaken. Usually repairs are straightforward building repairs, however in certain instances sub-structural stabilisation techniques are required.

The main sub-structural stabilisation techniques are Underpinning or Micropiling - the purpose of which is to transfer the load of the building to a new depth, unaffected by what caused the subsidence in the first place. These are undertaken by specialist contractors.

Recovering Costs

The following provides some guidelines as to the recovery of the costs of the subsidence incident from a third party. This may be readily undertaken by your insurer if you are making a claim, however there may be circumstances where this is not applicable or not available.

Vendor

If it can be established that the vendor concealed a known problem to a property by a statement (written or verbal) upon which the purchaser relies and that statement is knowingly incorrect, then the vendor can be held responsible as it constitutes misrepresentation.

A vendor can also be liable under the statute of Defective Premises Act 1972 if they have commissioned work to the property that is the cause of subsidence.

Surveyors, Architects and Engineers

If the work is negligent and the owner suffers a loss, either for new buildings or repairs to existing buildings which are under their design or administration, a claim can be made against such professionals. This will be subject to limitation.

Pre-purchase surveys or mortgage valuation reports that are negligent can give rise to claims against the surveyor, architect or engineer. These are subject to limitation.

Liabilities of surveyors in respect to pre-purchase surveys, as per numerous court cases, is not to be the cost of the relevant repair but the diminution in market value attributable to the need for the repairs.

Builder

The original builder or developer of a property, or a builder undertaking repairs that were not fit for purpose or suitable, giving rise to a loss can be pursued.

A statutory liability can also be attached under the Defective Premises Act 1972.

Local Authorities

If a local authority has negligently approved defective plans/drawings under the Building Regulations, or approved defective work on site, they can have liability if, in consequence of their negligence, there is a present or imminent danger to the health and safety of the property.

Tree root encroachment from Local Authority trees can place a liability on the authority (particularly if they have a Parks Department) and is therefore deemed knowledgeable of tree roots and their propensities. There are several legal precedents established in this area.

Adjoining Owners

Adjoining owners can be considered for recoveries in several situations:

- Removal of support. If the adjoining owner undertakes some work that removes support to the adjacent land and the building consequently suffers, then a liability can attach.
- Party walls. If a party wall has suffered subsidence damage and needs underpinning, it is clearly in the mutual benefit of both the wall owners. Under the Party Wall Act 1996, in such circumstances both owners can jointly be called to meet the cost in a 50:50 split (although a different apportionment is possible depending on the degree of the benefit to each owner).

This apportionment will be covered in the Party Wall Act and creates a statute liability on the adjoining owner and recovery can be sought. It is normal for a party wall to be underpinned from one side only and the work included in the contract of the property from which the underpinning is being undertaken. The insurer concerned can seek contribution from the adjoining owner so long as the apportionment is included in the Party Wall award.

- Failure to maintain. If the property owner is aware of a defect to their property, for example leaking drains, and fails to take remedial action and subsequently there is damage to the adjoining property then a nuisance has arisen which is actionable.
- Non-natural user. If something that is non-natural and dangerous is brought onto the land and escapes then strict liability occurs. In the context of subsidence this could be an oil storage tank that leaks into the ground, softens the soil and causes subsidence.
- Employer of contractor. If a property owner engages a contractor to undertake work to his property (or land) which causes damage to the adjoining property then a liability may arise. Usually this can be passed to the contractor, however if undertaken negligently then the employer can take liability. This can include damage from piling.
- Tree root trespass and nuisance. For a potential claim to arise against a private tree owner there must first be encroachment of the tree roots onto the neighbouring land and damage to the neighbour's property. It must also be demonstrated that the tree owner knew, or ought to have known, that the encroachment would cause damage and that they failed to take precautions to prevent or reduce the risk.

As most house owners are not technically skilled to determine whether the trees can, or will, cause damage and are therefore unable to take preventative actions, claims against neighbours are unlikely to be successful.

If the owner has previously been advised that the tree is causing damage and has failed to take action and the problem continues then a claim can be made for the subsequent damage. If the adjoining owner is a professional with appropriate qualifications etc. (arboriculturist, surveyor), they will most likely have the knowledge regarding tree roots and buildings and so a claim could possibly be pursued.

In the light of various court cases on private tree root nuisance, insurers have collectively reached an agreement known as the ABI Domestic Subsidence Tree Root Claims Agreement Third Party Liability (1997).

The aim of the agreement was to simplify the many claims of tree root encroachment where the Courts would hold that private individuals would not have the appropriate technical knowledge.

Where a claim arises from a neighbour's tree, the Agreement requires the building insurer to place the adjoining occupier of the property on 'notice' of the nuisance, with the request to take appropriate mitigating action. The adjoining occupier is required to identify their contents insurers who would cover such liabilities.

If the adjoining owner fails to take such action to mitigate the position then in the event of continuing or recurrent movement to the property from the same cause, and with knowledge deemed to be held on the propensities of tree roots, a recovery action can be taken against the adjoining occupier.

NB: the courts have held liability for tree root nuisance as an occupier's liability. Remember, liability cover is provided under the contents section of your insurance policy.

Previous Insurers

You cannot pursue previous insurers of the property when the property owner changes. If the owner has not changed insurers (i.e. when the lending company transfers under block insurance) then there may be a contribution applicable. To simplify the issue insurers implemented the ABI Domestic Subsidence Agreement:

- It only applies to domestic properties where there has been a change of insurer but not policyholder.
- If there is a claim in the first 8 weeks of the new insurance policy then the previous insurers would handle the claim.
- If the claim is made from 8 weeks to one year then the claim is split 50:50.

Standard Policy Exclusions

All policies for subsidence have exclusions and these are often points of dispute. Whilst they will vary from insurer to insurer the following are the most common:

- Policy excess is usually £1000 for each incident of damage (residential).
- Occurring whilst the buildings are undergoing demolition, structural alteration or structural repair. In these circumstances, the building is in the care and control of the contractor and so if subsidence occurs this indicates some failure on behalf of the contractor to take adequate safeguards.
- Caused by settlement, shrinkage or expansion. The purpose of this clause is to avoid claims early in a building's life due to bedding down in constructional faults. Shrinkage or expansion happens when elements of the building react to environmental or thermal changes.
- Caused by compaction of infill.
- Caused by river or coastal erosion.
- Arise from defective design, materials or faulty workmanship. This is a difficult exclusion to apply in a building other than one recently constructed or within any period of warranty such as provided by the NHBC 10-year warranty.